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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,457	06/14/2001	Christian Caspersen	2836-0153PUS1	1421
2292 7590 07/22/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
LEE, SHUN K				
ART UNIT		PAPER NUMBER		
2884				
NOTIFICATION DATE		DELIVERY MODE		
07/22/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/806,457

Applicant(s)

CASPERSEN, CHRISTIAN

Examiner

Shun Lee

Art Unit

2884

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 7, 9, 11, 12, 15, 16, 23, 24, 27, 29, 36, 37, 44 and 47-51.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/David P. Porta/
Supervisory Patent Examiner, Art Unit 2884

Continuation of 11, does NOT place the application in condition for allowance because: applicant argues that the principle of operation in Malin et al. teach away from the claimed invention because a dark field stop restricts any possible detection of fluorescence. Examiner respectfully disagrees. First, applicant's arguments based on a transmission geometry (see Figs. on pg. 12 of remarks filed 10 July 2009) are inapplicable to the reflection geometry of Malin et al. (see Figs. 1 and 2 of Malin et al.). Second, it is important to recognize that the dark field stop assembly (18 in Figs. 1 and 4c) of Malin et al. do not block the excitation beam (1 in Figs. 1 and 4c). Thus applicant's arguments of darkfield illumination (wherein a stop is used to block a portion of the excitation beam) are also inapplicable to Malin et al. since Malin et al. teach a dark field stop assembly that is used to block a portion of the light from the sample. Further, applicant's arguments rest on the unsupported assumption that the dark field stop of Malin et al. must have such a large size so as to restrict any possible detection of fluorescence. On the contrary, the dark field stop of Malin et al. is as small as possible since Malin et al. state (column 7, lines 10-14) that "to allow the passage of diffused light close to the optical axis, that proportion of the diffused-light cone 14 effectively blocked by the dark-field stop 61 must be as small as possible". Thus Malin et al. teach that the proportion of collection angle effectively blocked by the stop is as small as possible. Further, Hamashima et al. teach (column 4, lines 47-59) to provide a dichroic mirror (24 in Fig. 1) for simultaneously detecting three kinds of light information (i.e., the scattered light from the edge of the pattern, the reflection from the pattern and the fluorescence or phosphorescence from the pattern) so that by using these three kinds of light information and the scanning position information of the beam spot, the desired edge detection, pattern position detection and line width and dimension measurement of the different patterns (e.g., the photoresist pattern and the polysilicon pattern) are performed in a diversified manner. Thus it would have been obvious to one having ordinary skill in the art at the time of the invention to provide a dichroic mirror in the apparatus of Malin et al., in order to obtain fluorescence measurements in addition to scattering measurements at a desired resolution so as to determine defects and contamination in a diversified manner. Therefore, applicant's arguments are not persuasive.